IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 23269 of 2000

Between:

Kasani Venkanna, S/o. Late K.Mattaiah,
R/o. H.No. 14-110 (New) No.14-168), Huzur Nagar (Vil & Mandal),
Nalgonda District.

..... PETITIONER

AND

1 The Executive Officer, O/o. Gram Panchayat, Huzur Nagar

(Vil.&Mandal), Nalgonda District.
2 The divisional Panchayat Officer, Miryalaguda Division, at
Miryalaguda, Nalgonda District.
3 The District Collector (PW), rep., by Dist.Panchayat Officer,

Nalgonda District, at Nalgonda.
4 The Commissioner of P.R. & RE., Govt. of Andhra Pradesh,

Urdu Hall Lane, Himayatnagar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly one in the nature of writ of MANDAMUS directing the respondent 1 to 4 not to conduct public auction of the 32 Sq. Yards of open space attached to the H.No.14110 (New No.14-168) in ward No.14 of the petitioner and declare the 32 Sq. Yards piece of land which is part and parcel of the Petitioner's house No.14-110 (New No.14-168), Huzurnagar Village and Mandal, Nalgonda District, by declaring impugned proceedings of the respondents 1 to 4 vide Lr.No.35/G.P.H./2000, dated 16.10.2000, Lr.No.A2/35/G.P.H./2000, dated 25.4.2000, Lr.No. A2/281/2000 dated:9..5.2000 & 7.6.2000, Proc.Memo.No.582/2000-B1(Pts), dated:30.5.2000, Proc.No.14210/CPR-D1/2000

datedd:19.9.2000 Proc.No.A2/281/2000 dated:10.10.2000, as illegal.

Counsel for the Petitioner: MR.B.SAI RAM GOUD

Counsel for the Respondent No.1: MR.P.RAGHAVENDRA REDDY, Standing Counsel

Counsel for the Respondent Nos.2 to 4: None appeared.

The Court made the following:

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23269 OF 2000

ORDER:

The writ petition is filed challenging the action of the respondents 1 to 4 in proposing to sell the land admeasuring 32 square yards allegedly appurtenant to House No.14-110 (New No. 14-168) in Ward No.14. He also seeks invalidation of the proceedings of the District Collector, the third respondent, whereby and whereunder, first respondent Gram Panchayat was permitted to sell the said land and other land by public auction.

The petitioner claims to be the owner of House No.14-110 along with the land admeasuring 88 square yards, where he allegedly constructed three rooms. He avers that his father and his ancestors have been enjoying the property for more than a century. The first respondent passed resolution on 25.04.2000 claiming the land admeasuring 32 square yards as Panchayat land and sent proposals to the third respondent, who granted permission to sell the land duly fixing the upset price of Rs.1,000/- (Rupees one thousand only) per square yard. It is the case of the petitioner that in 1988, when the petitioner's father made an application to the Executive Officer of Gram Panchayat, after obtaining necessary approval from the Sarpanch of the village, the Gram Panchayat issued proceedings on 24.02.1988 wherein it was admitted that open place admeasuring 32 square yards does not belong to Gram Panchayat. Therefore, the petitioner claims that the land admeasuring 32 square yards exclusively belongs to him.

The Gram Panchayat has filed counter affidavit opposing the writ petition. It is stated that Kasani Mattaiah, father of the petitioner is the owner of the house bearing No.14-110 with measurements of 22 x 23 feet equivalent to 56 square yards, as per the Gram Panchayat Assessment Registers from 1971-1992, which is revised and updated from time to time. In 1992-93, the number of the House was changed as 14-168 in Ward No.14 showing the house consisting of 56 square yards. The allegation made by the petitioner that the total extent of the property is 88 square yards is denied. The other allegation that petitioner's father made application to the Gram Panchayat, as a result of which Gram Panchayat issued proceedings dated

24.02.1988 is also denied. It is further stated that there is no such application in the files of the Gram Panchayat and that no meeting of Gram Panchayat was conducted on 24.02.1988 and never the issue of relinquishing right of the Gram Panchayat in respect of 32 square yards of land was discussed by the Gram Panchayat. The document produced by the petitioner is fabricated. It is further stated that the petitioner submitted a petition on 7.12.2000, in the Gram Panchayat Office expressing his willingness to pay the upset price of Rs.32,000/- (Rupees thirty two thousand only) in two instalments for 32 square yards of Panchayat land and therefore the allegations made in the affidavit are not true.

The learned counsel for the petitioner Sri Sai Ram Goud placed strong reliance on proceedings No.38/G.P.H./1988 dated 24.02.1988 in support of contention that the Gram Panchayat has relinquished its rights in favour of the petitioner for 32 square yards of land and therefore without any notice, the Gram Panchayat cannot be permitted to sell away the land by public auction. Alternatively, he submits that the petitioner is in possession of the property and therefore he cannot be evicted without following principles of natural justice. **Per Contra**, the learned Standing Counsel for Gram Panchayat submits that the proceedings dated 24.02.1988 is a fabricated document, and there is no such material or record in the Gram Panchayat Office to support the contention of the petitioner. He further submits that even if such proceedings are taken to be true, petitioner's father himself admitted that it is a Panchayat land and that the petitioner herein also made a representation on 07.12.2000 pursuant to orders of this Court in W.P.M.P.No.29536 of 2000 requesting to regularise the occupation and expressed his willingness to pay upset price of Rs.32,000/- (Rupees thirty two thousand only) in two instalments.

The short question is whether the petitioner has any right to prevent the Gram Panchayat from proceeding with the public auction to sell away its land? Reliance is placed by the learned counsel for the petitioner on the alleged proceedings dated 24.02.1988 is misconceived. Though a categorical averment is made in the counter affidavit, that no such proceedings exist in the records of Gram Panchayat, no reply affidavit is filed by the petitioner denying the same nor any material is produced before this Court to show that the petitioner acquired ownership rights. Be that as it is, a perusal of the proceedings dated 24.02.1988 allegedly issued by the first respondent, Gram Panchayat itself would show that the petitioner's father made a representation on 05.02.1988 admitting the title of the Gram Panchayat and asked for permission to use the land. It would belie the contention of the petitioner that his House bearing No.14-168 is constructed on land admeasuring 88 square yards. Secondly, even if the proceedings are taken to be true, there is no provision in A.P.Panchayat Raj Act, 1994 (the Act, for brevity), which empowers the Gram Panchayat or the Sarpanch to relinquish the rights in the land, which is vested in the Gram Panchayat for the purpose of maintenance. Section 58 of the Act reads as under:

58. Certain Government porambokes to vest in Gram Panchayat, etc:-

(1) The following porambokes namely, grazing grounds, threshing floors, burning and burial grounds, cattle stands, cart-stands and topes, which are at the disposal of the government

and are not required by them for any specific purpose shall vest in the gram panchayat subject to such restrictions and control as may be prescribed.

(2) The Government may, at any time by notification in the Andhra Pradesh Gazette, direct that any porambokes referred to in sub-section (1) shall cease to vest in the gram panchayat if it is required by them for any specific purpose and thereupon such porambokes shall vest in the Government.

(3) The gram panchayat shall have power, subject to such restrictions and control as may be prescribed, to regulate the use of any other poramboke which is at the disposal of the Government, if the gram panchayat is authorised in that behalf by an order of the Government.

(4) The gram panchayat may, subject to such restrictions and control as may be prescribed, plant trees on any poramboke the use of which is regulated by it under sub-section (3).

A plain reading of the above provision would show that the land within the gram panchayat limits absolutely vests in the Government, who is the paramount owner, and the Gram Panchayat cannot unilaterally assign the land in favour of a person or relinquish rights, which do not vest in Gram Panchayat.

This Court in W.P.M.P.No.29536 of 2000 dated 29.11.2000 passed the following order.

... Under those circumstances, the petitioner is directed to make a representation to the Gram Panchayat, bringing all those facts to the notice of the Gram Panchayat, within a period of 10 days. The Gram Panchayat is directed to pass appropriate order within a period of four weeks thereafter. Till such time, there shall be direction not to dispossess the petitioner from the above said land. However, the learned counsel for the petitioner states that the petitioner is ready to pay the upset price fixed by the Gram Panchayat in two instalments.

Therefore, the Gram Panchayat is also directed to consider the above fact and pass appropriate orders.

A reading of the above order would show that the petitioner expressed his willingness before this Court to pay the upset price fixed by the Gram Panchayat in two instalments. This court gave liberty to the petitioner to make a representation and accordingly the petitioner made a representation on 07.12.2000 (this is not denied by the petitioner). This is a strong circumstance, which shows that the petitioner is pleading a case and setting up title in himself, which is false and frivolous. The land, at all times belongs to Gram Panchayat and at no point of time, Gram Panchayat or the Government assigned the land to the petitioner's father. The action of the Gram Panchayat in selling the land by public auction as permitted by the District Collector is unexceptionable and indeed it is well settled that any public property must be disposed of by public auction to ensure transparency, which would subserve public interest.

The writ petition is devoid of merit and is dismissed with costs.

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(V.V.S.RAO,J)

03.09.2004.

pln

To

1 The Executive Officer, O/o. Gram Panchayat, Huzur Nagar

(Vil.&Mandal), Nalgonda District.

2 The Divisional Panchayat Officer, Miryalaguda Division, at Miryalaguda, Nalgonda District.

3 The District Collector (PW), rep., by Dist.Panchayat Officer,

Nalgonda District, at Nalgonda.

4 The Commissioner of P.R. & RE., Govt. of Andhra Pradesh,

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5 Two C.D. copies.